



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: October 10, 2019

TIME: 9:23 AM

WSR 19-21-048

Agency: Department of Social and Health Services, Economic Services Administration

Original Notice

Supplemental Notice to WSR

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-09-032 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) The department is proposing to amend WAC 388-410-0005 "Cash assistance overpayment amount and liability" and 388-410-0015 "Recovery of cash assistance overpayments by mandatory grant deduction".

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 26, 2019	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11 th and Jefferson. A map is available at: https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2

Date of intended adoption: Not earlier than November 27, 2019 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator

Address: PO Box 45850
Olympia, WA 98504

Email: DSHSRPAURulesCoordinator@dshs.wa.gov

Fax: 360-664-6185

Other:

By (date) 5:00 p.m. November 26, 2019

Assistance for persons with disabilities:

Contact Jeff Kildahl, DSHS Rules Consultant

Phone: 360-664-6092

Fax: 360-664-6185

TTY: 711 Relay Service

Email: Kildaja@dshs.wa.gov

Other:

By (date) November 12, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is proposing to amend WAC 388-410-0005 and WAC 388-410-0015 to clarify which members of a household are and are not responsible for repaying cash overpayments, the circumstances where overpayments are recovered by means of a mandatory grant deduction, and that cash overpayments are not recovered from children.

Reasons supporting proposal: These amendments protect the financial wellbeing of children by clarifying that cash overpayment liability and repayment apply to adults, not children.

Statutory authority for adoption: RCW 74.04.050, RCW 74.04.055, RCW 74.04.057, RCW 74.04.500, RCW 74.04.510, RCW 74.08.090, RCW 74.08A.120

Statute being implemented:

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Department of Social and Health Services

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Sarah Garcia	PO Box 45470, Olympia, WA 98504-5770	360-522-2214
Implementation:	Sarah Garcia	PO Box 45470, Olympia, WA 98504-5770	360-522-2214
Enforcement:	Sarah Garcia	PO Box 45470, Olympia, WA 98504-5770	360-522-2214

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: This amendment is exempt as allowed under RCW 34.05.328(5)(b)(vii) which states in part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents".

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025.

Explanation of exemptions, if necessary: The proposed rules do not have an economic impact on small businesses. They only impact DSHS clients.

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: October 8, 2019

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 19-08-066, filed 3/29/19, effective 5/1/19)

WAC 388-410-0005 Cash assistance overpayment amount and liability. (1) The amount of overpayment for cash assistance households is determined by the amount of assistance received to which the assistance unit was not entitled.

(2) Cash overpayments are recovered from:

(a) Any (~~individual~~) adult member of an overpaid assistance unit, whether or not the member is currently a recipient;

(b) Any assistance unit of which ((a)) an adult member of the overpaid assistance unit has subsequently become a member; or

(c) A nonneedy caretaker relative or guardian who received (~~the overpayment on behalf of~~) assistance for a child who is in the assistance unit.

(3) A cash assistance overpayment is not recovered from:

(a) (~~A nonneedy caretaker relative or guardian who did not receive the overpayment on behalf of a child;~~

~~(b-))~~ A child who was in the assistance unit at the time the overpayment was accrued;

(~~(c) A nonneedy caretaker relative or guardian who was assessed an overpayment for a child who is not currently part of the assistance unit;~~) or

(~~(d))~~ (b) A person not receiving assistance when an unintentional overpayment of less than thirty-five dollars is discovered, computed, or both.

(4) Overpayments resulting from incorrectly received cash assistance are reduced by:

(a) Cash assistance a household would have been eligible to receive from any other category of cash assistance during the period of ineligibility; and

(b) Child support the department collected for the month of overpayment in excess of the amount specified in (a) of this subsection; or

(c) Any existing grant underpayments.

(5) A cash assistance overpayment cannot be reduced by a food assistance underpayment.

(6) An underpayment from one assistance unit cannot be credited to another assistance unit to offset an overpayment.

(7) All overpayments occurring after January 1, 1982 are required to be repaid by mandatory grant deduction except where recovery is inequitable as specified in WAC 388-410-0010.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-410-0015 Recovery of cash assistance overpayments by mandatory grant deduction. (1) All overpayments of cash assistance are recovered by means of a mandatory deduction from future continuing assistance grants except:

(a) When a nonneedy caretaker relative or guardian was assessed an overpayment for a child who is not currently part of the assistance unit or,

(b) As specified by WAC 388-410-0010.

(2) All adult members of an overpaid assistance unit are responsible for repayment of an overpayment. Repayment may be from:

- (a) Resources, ~~((and/or))~~ income or both; or
- (b) Deductions from subsequent grants; and
- (c) An assistance unit member's estate.

(3) The mandatory grant deduction of an intentional overpayment is ten percent of the monthly grant payment standard.

(4) A monthly grant deduction of up to one hundred percent of the grant can be established when:

(a) The overpayment is intentional;

(b) The client has liquid resources available but refuses to use these resources in full or partial satisfaction of the overpayment; and

(c) The amount of income and resources remaining available to the assistance unit is not less than ninety percent of the grant payment standard.

(5) An unintentional overpayment is recovered by grant deduction of five percent of the monthly grant payment standard unless the client voluntarily requests a larger deduction in writing.

(6) A monthly deduction for overpayment recovery can be established against the clothing and incidental grant of a recipient in a nursing facility, intermediate care facility, or hospital. A monthly deduction cannot be established against the vendor payment to the nursing facility, intermediate care facility or hospital.

(7) When the monthly grant deduction is equal to or more than the current grant for which the client is eligible had no overpayment occurred, the grant is suspended.

(8) No more than the total amount of an overpayment may be collected by mandatory deduction from a client's public assistance grant. The client will receive compensation for an underpayment resulting from any erroneous monthly deduction.